

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

ANTHONY MICHAEL GIOIOSA, SR.,  
Plaintiff,  
v.  
JAMES DZURENDA, et al.,  
Defendants.

Case No. 2:20-cv-01618-APG-DJA

ORDER

This action began with an application to proceed *in forma pauperis* and a *pro se* civil rights complaint filed under 42 U.S.C. § 1983 by Anthony Michael Gioiosa, Sr. ECF Nos. 1, 1-1.. On June 21, 2021, I dismissed the complaint with leave to amend and directed Gioiosa to file an amended complaint by July 23, 2021. ECF No. 7 at 9-10. That deadline has passed and Gioiosa has not filed an amended complaint or otherwise responded to my order.

I grant Gioiosa's application to proceed *in forma pauperis*. ECF No. 1. Based on the information regarding his financial status, Gioiosa is not able to pay an initial installment payment toward the full filing fee pursuant to 28 U.S.C. § 1915. Gioiosa will, however, be required to make monthly payments toward the full \$350.00 filing fee when he has funds available.

District courts have the inherent power to control their dockets and "[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal" of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action, with prejudice, based on a party's failure to prosecute an action, failure to obey a court order, or failure to comply with local rules. *See Ghazali v. Moran*, 46 F.3d 52, 53-54 (9th Cir. 1995) (affirming dismissal for noncompliance with local rule); *Ferdik v. Bonzelet*,

1 963 F.2d 1258, 1260-61 (9th Cir. 1992) (affirming dismissal for failure to comply with an order  
 2 requiring amendment of complaint); *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988)  
 3 (affirming dismissal for failure to comply with local rule requiring *pro se* plaintiffs to keep court  
 4 apprised of address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (affirming  
 5 dismissal for failure to comply with court order); *Henderson v. Duncan*, 779 F.2d 1421, 1424  
 6 (9th Cir. 1986) (affirming dismissal for lack of prosecution and failure to comply with local  
 7 rules).

8 In determining whether to dismiss an action for these reasons, the court must consider  
 9 several factors: (1) the public's interest in expeditious resolution of litigation; (2) the court's  
 10 need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy  
 11 favoring disposition of cases on their merits; and (5) the availability of less drastic alternatives.  
 12 See *Thompson*, 782 F.2d at 831; *Henderson*, 779 F.2d at 1423-24; *Malone*, 833 F.2d at 130;  
 13 *Ferdik*, 963 F.2d at 1260-61; *Ghazali*, 46 F.3d at 53.

14 Here, the first two factors (the public's interest in expeditiously resolving this litigation  
 15 and the court's interest in managing the docket) weigh in favor of dismissal. The third factor  
 16 (risk of prejudice to the Defendants) also weighs in favor of dismissal because a presumption of  
 17 injury arises from the occurrence of unreasonable delay in filing a pleading ordered by the court  
 18 or prosecuting an action. See *Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976). The  
 19 fourth factor (public policy favoring disposition of cases on their merits) is greatly outweighed  
 20 by the factors in favor of dismissal discussed herein. Finally, a court's warning to a party that  
 21 the failure to obey the court's order will result in dismissal satisfies the "consideration of  
 22 alternatives" requirement. *Ferdik*, 963 F.2d at 1262; *Malone*, 833 F.2d at 132-33; *Henderson*,  
 23 779 F.2d at 1424. My order expressly stated: "if Gioiosa fails to file an amended complaint

1 curing the deficiencies outlined in this order by **July 23, 2021**, this action will be dismissed”  
2 (ECF No. 7 at 10). Thus, Gioiosa had adequate warning that dismissal would result from his  
3 failure to file an amended complaint by July 23, 2021.

4 I therefore order that Gioiosa’s application to proceed *in forma pauperis* (ECF No. 1) is  
5 granted. Gioiosa shall not be required to pay an initial installment of the filing fee. Although  
6 this action is dismissed, the full filing fee must still be paid under 28 U.S.C. § 1915(b)(2).

7 I further order, under 28 U.S.C. § 1915 as amended by the Prison Litigation Reform Act,  
8 the Nevada Department of Corrections will forward payments from the account of **Anthony**  
9 **Michael Gioiosa, Sr., #1170052** to the Clerk of the United States District Court, District of  
10 Nevada, 20% of the preceding month’s deposits (in months that the account exceeds \$10.00)  
11 until the full \$350 filing fee has been paid for this action. The Clerk of the Court will send a  
12 copy of this order to the Finance Division of the Clerk’s Office. The Clerk will send a copy of  
13 this order to the attention of Chief of Inmate Services for the Nevada Department of Corrections,  
14 P.O. Box 7011, Carson City, NV 89702.

15 I further order that this action is dismissed without prejudice based on Gioiosa’s failure to  
16 file an amended complaint in compliance with my June 21, 2021 order.

17 I further order the Clerk of Court to enter judgment accordingly.

18 DATED THIS 19th day of August 2021.

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21 UNITED STATES DISTRICT JUDGE  
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